

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8231 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MADHUKAR @ MADHIYO KESHAVRAO GAIKWAD

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 14th September, 1998, made by the Commissioner of Police, Vadodara City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act. Two offences for violation of prohibition law are registered against the petitioner and are pending trial. In each of the said cases, substantial quantity of country liquor was recovered from the possession of the petitioner. Besides, statements of some three witnesses have also been recorded by the police. Three witnesses have deposed in respect of the bootlegging activities of the petitioner and its adverse effect on public tranquility and even tempo of life.

The only ground on which the impugned order has been assailed is in each of the above referred offences registered against the petitioner, the police had taken the samples of the liquor recovered from the petitioner and sent to the Forensic Science Laboratory for chemical examination. However the reports of the Forensic Science Laboratory in respect of the said samples have not been furnished to the petitioner. Thereby the petitioner's right to make an effective representation has been infringed. The averment is uncontroverted. It is urged that the Detaining Authority while making the order of detention had not relied upon the reports of the Forensic Science Laboratory and, therefore, the same are not supplied to the petitioner. In the matter of RANVIRSINH KALYANSINH (SCA NO. 7490/98, decided on 12th JULY 1999) I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports were yet not available. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

Petition is, therefore, allowed. The impugned order dated 14th September 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI